## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARILYN JAMES,	)
	)
Plaintiff,	)
	)
v.	NO. 09-CV-957-WDS
	)
CITY OF CARBONDALE, an Illinois	<b>s</b> )
municipal corporation,	)
	)
Defendant.	)

## MEMORANDUM AND ORDER

## **STIEHL, District Judge:**

Before the Court is a motion to dismiss Count III of Plaintiff's First Amended Complaint (Doc. 25) to which the plaintiff has not filed a response. The defendant seeks dismissal of this count on the grounds that Count III alleges disparate impact discrimination under Title VII. Plaintiff has alleged, in Count III that the City has a practice of discriminating against African-American employees by intentionally keeping them in jobs with lower-level classifications. The defendant asserts that plaintiff's claim for disparate impact is, therefore, based on allegations of disparate treatment.

Disparate treatment claims require a showing of intent – "the plaintiff must demonstrate deliberate discrimination within the limitations period." *Lewis v. City of Chicago, Ill.*, 130 S. Ct. 2191, 2194 (2010). To establish a disparate impact claim, which Count III seeks to allege, plaintiff must make a showing "that the employer 'uses a particular employment practice that causes a disparate impact' on one of the prohibited bases." *Id.* at 2197-98 (*citing Ricci v. DeStefano*, 129 St. Ct. 2658, 2672-73 (2009)). Because plaintiff's claim in Count III is based upon her claim that was

actively discriminatory, keeping a particular class of individuals (African-Americans) in lower-level

classifications with lower level salaries is an act of intentional discrimination, which would be a

disparate treatment claim. Count I of the First Amended Complaint alleges disparate treatment

based on intentional decisions, and therefore, Count III, is, as currently framed, the same as the

claim in Count I.

Accordingly, the Court GRANTS defendant's motion to dismiss Count III of the First

Amended Complaint, and it is **DISMISSED.** Plaintiff may seek leave to file a Second Amended

Complaint, including a properly pleaded disparate impact claim within fourteen (14) days of the date

of this Order.

IT IS SO ORDERED.

**DATE:** 3 August, 2011

/s/ WILLIAM D. STIEHL **DISTRICT JUDGE** 

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